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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,264	03/31/2004	Sentaro Ito	033294-026	5346

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EXAMINER

MANCHO, RONNIE M

ART UNIT PAPER NUMBER

3663

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/813,264

Applicant(s)

SENTARO ITO ET AL

Examiner

Ronnie Mancho

Art Unit

3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/31/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remark

1. The application recites “road surface obtaining means for obtaining”. The applicant has not properly invoked the 112 sixth paragraph because of the recitation of the structure that performs the “obtaining”. The remark applies to the other means clauses in the claims.

See MPEP 2181 (R-3).

Election/Restrictions

2. Applicant's election with traverse of species C and D in the reply filed on 4/3/06 is acknowledged. The traversal is on the ground(s) that the parameters of the election of species requirement seem inconsistent.

This is *not* found persuasive because as noted by the examiner, applicant's claims 9 and 11 contain single species which require choosing “at least one of” as in claim 9, and in claim 11 choosing an “and/or” process. Applicant has correctly chosen the species as required.

The election of species requirement is believed to be proper since one or both of the limitations in the above claims need to be selected due to the multiple embodiments presented by the applicant.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu et al (7003389).

Regarding claim 1, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose a control device for a vehicle comprising:

road surface obtaining means for obtaining a value according to a height difference (col. 6, lines 28-36) in the vertical direction on a road surface, on which a vehicle runs, between a contact position of wheels at the left side of the body and a contact position of wheels at the right side of the body (col. 5, lines 29-67);

specific process executing means for executing a specific process for preventing a roll angle of the vehicle from being excessive when the obtained value according to the height difference becomes a value showing that the height difference is greater than a predetermined value (col. 6, lines 14-27).

Regarding claim 2, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 1, wherein the road surface obtaining means is provided with: motion state quantity obtaining means for obtaining motion state quantity showing a motion state of the vehicle (col. 6, lines 28-67);

estimated lateral acceleration calculating means for calculating, as an estimated lateral acceleration, an estimated value of a lateral acceleration that is a component of the acceleration exerted on the vehicle in the lateral direction of the vehicle body, based upon the obtained motion state quantity (col. 6, lines 28-67, fig. 4); and

a lateral acceleration sensor for obtaining the actual value of the lateral acceleration as an actual lateral acceleration by detecting the value of the component of external force exerted on the vehicle in the lateral direction of the vehicle body; wherein the road surface obtaining means is configured to obtain the value according to the height difference based upon the result of the comparison between the calculated estimated lateral acceleration and the obtained actual lateral acceleration (col. 6, lines 28-67, fig. 4).

Regarding claim 3, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the road surface obtaining means is configured to obtain the value according to the height difference based upon a difference between the calculated estimated lateral acceleration and the obtained actual lateral acceleration.

Regarding claim 4, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2,

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wherein the specific process executing means is configured to execute the specific process when the obtained value according to the height difference becomes the value showing that the height difference is greater than the predetermined value, and when the value of the obtained actual lateral acceleration is greater than the value of the calculated estimated lateral acceleration.

Regarding claim 5, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the motion state quantity obtaining means is configured so as to obtain the wheel speed of each wheel of the vehicle as the motion state quantity, and the estimated lateral acceleration calculating means is configured to calculate the estimated lateral acceleration based upon the difference between the wheel speed of the wheels at the left side of the vehicle body and the wheel speed of the wheels at the right side of the vehicle body.

Regarding claim 6, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 5, wherein the estimated lateral acceleration calculating means is configured to calculate the estimated lateral acceleration based upon the difference between the average of the wheel speeds of the front-left and rear-left wheels and the average of the wheel speeds of the front-right and rear-right wheels.

Regarding claim 7, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 1, wherein the road surface obtaining means is configured to obtain a value showing a degree of inclination of the road surface, on which the vehicle runs, in the body roll direction as the value according to the height difference.

Regarding claim 8, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the road surface obtaining means is configured to obtain a value showing a degree of inclination of the road surface, on which the vehicle runs, in the body roll direction as the value according to the height difference.

Regarding claim 9, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 1, wherein the specific process executing means is configured to execute at least one of a process for producing an alarm and a process for decelerating the vehicle as the specific process.

Regarding claim 10, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 2, wherein the specific process executing means is configured to execute at least one of a process for producing an alarm and a process for decelerating the vehicle as the specific process.

Regarding claim 11, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 10, wherein the process for decelerating the vehicle includes a process for producing braking force on the wheels of the vehicle by a brake fluid pressure regardless of an operation of a brake pedal.

Regarding claim 12, Lu et al (figs. 1-6; abstract; col. 3, lines 40-67; col. 4, lines 34-67; col. 5, lines 29-67; col. 6, lines 1-27) disclose the control device for a vehicle claimed in claim 10, wherein the specific process differs depending upon the time when the state where the

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obtained value according to the height difference becomes the value showing that the height difference is greater than the predetermined value continues.

MPEP 2114

5. The statement of intended use or field of use, "obtaining a value according to", "executing a specific process.....when.....is greater than", "obtaining motion state quantity, "calculatingbased upon", and similar clauses, etc are essentially method limitation or statement of intended or desired use. Thus, the claim as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647. See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Communication

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571-272-6984. The examiner can normally be reached on Mon-Thurs: 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronnie Mancho
Examiner
Art Unit 3663

September 16, 2006

JACK KEITH
SUPERVISOR (PATENT EXAMINER)